



**COUNTY OF PLACER**  
**ADMINISTRATIVE SERVICES DEPARTMENT**  
Procurement Services Division  
2964 Richardson Drive  
Auburn CA 95603  
Phone: 530-889-7776

**INVITATION FOR BIDS**

Bidder Acknowledgement

**RELEASE DATE:** July 14, 2006

**BID NO.** 9582

**TITLE:** Auburn CNG Station Overhaul

**DUE DATE:** August 3, 2006 3:30 PM (Bids shall not be accepted after this date/time)

All questions regarding this solicitation shall be directed to:

**Buyer Name:** Bob Bigney

**Telephone:** 530-889-4255

This package includes the following documents:

Bid Form



Scope of Work



FTA Contract Clauses



Insurance Requirements



Type of Award:

Fixed Contract (Purchase Order)



Open-End Contract (Blanket Purchase



Order) for the approximate period:

\_\_\_\_\_

**Bidder shall complete the area below. Unsigned bids shall be rejected; no exceptions.**

The undersigned offers and agrees, if this bid is accepted within **90 calendar days** from the date of opening, to furnish all of the items upon which prices are quoted, at the prices set opposite each item, delivered at the designated point(s) by the method of delivery and within the time specified herein and subject to the Terms and Conditions of this IFB, including any and all addenda. In the event of a contract award pursuant to this bid, performance by the successful bidder of any or all of the services, or delivery of any or all of the products defined herein, shall constitute acceptance of all terms, conditions and requirements of the resulting agreement. I declare under penalty of perjury that I have not been a party with other bidders to an agreement to bid a fixed or uniform price.

Addendum Received, No(s). \_\_\_\_\_

NAME OF FIRM: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

By (signature): \_\_\_\_\_ Title: \_\_\_\_\_

**NO BID:**

☐

Reason: \_\_\_\_\_

## INVITATION FOR BIDS GENERAL TERMS AND CONDITIONS

The following provisions are hereby made a part of this bid by reference and attachment to this Invitation for Bids document. **Any contract award made as the result of this bid shall be governed by these General Terms and Conditions.** By signature in the space provided for bidder in these documents, bidder does agree to furnish the product(s) and/or service(s) pursuant to these conditions.

**WARNING:** It is the bidder's responsibility to monitor the County's website for possible addenda to this bid to inform him/herself of the most current specifications, terms, and conditions (see also Section 4 below), and to submit his/her bid in accordance with the original bid requirements and all addenda. All available bids and related addenda can be found at: : [www.placer.ca.gov/admin/procurement/openbids.htm](http://www.placer.ca.gov/admin/procurement/openbids.htm) Failure of bidder to obtain this information shall not relieve him/her of the requirements contained therein. Additionally, failure of bidder to return a signed addenda, when required, may be cause for rejection of his/her bid.

1. **GENERAL.** These provisions are standard for all County contracts. The County may delete or modify any of these standard provisions for a particular contract by indicating a change in the special instructions to bidders or in the bid. **Any bidder accepting a contract award as the result of this bid agrees that the provisions included within this Invitation for Bid shall prevail over any conflicting provision within any standard form contract of the bidder.**
2. **SUBMISSION OF BIDS.** Bids shall be submitted to the Procurement Services Division, 2964 Richardson Drive, Auburn, California, 95603, between the hours of 8:00 am and 5:00 PM (Pacific), Monday through Friday (excluding County holidays), prior to the date and time specified in this solicitation. Bids shall be submitted in a sealed envelope which clearly identifies the bid number, commodity, and closing date and time. Bids shall be submitted on the bid forms provided by the County. Bids must be signed by an authorized employee. The County shall not be responsible for bids delivered to a person/location other than that specified herein. Bids shall be in ink or typewritten and all changes and/or erasures shall be initialed and dated in ink. Any exceptions to the specifications, terms, or conditions of this solicitation shall be clearly indicated by bidder, without obliterating the original text or images contained herein.  
**WARNING: Late bids or unsigned bids shall not be accepted under any circumstances. Facsimile, telegraphic or telephone bids shall not be accepted.**
3. **ALTERATION OF BID DOCUMENTS.** Bidder hereby agrees, by signature on the face of this bid, that s/he has not altered the specifications, terms, or conditions of these documents, except as to clearly indicate exception to the requirements herein. Bidder also understands that, should it be discovered that the bidder altered these documents in a way that misleads or deceives the County as to the terms and conditions of their response, their bid shall be rejected and the bidder may be debarred in accordance with the processes defined in the Placer County Purchasing Policy Manual.
4. **AMENDMENTS TO THE BID.** Any amendment to this bid is valid only if in writing and issued by the Placer County Procurement Services Division.
5. **NO BID.** Persons desiring not to submit a bid should return the Bidder Acknowledgment marking it "NO BID," no later than the stated bid opening date and time, and state the reason in the response. Failure to respond by the bid deadline may result in removal of the bidder's name from the bid mailing list. NOTE: To qualify as a respondent, bidder must submit a timely "NO BID."
6. **NON-COLLUSION.** The bidder certifies that his bid is made without any previous understanding, agreement or connection with any person, firm or corporation making a bid for the same project and is in all respects fair, without outside control, collusion, fraud or otherwise illegal action.
7. **CONFLICT OF INTEREST.** Bidder states that no County officer or employee, nor any business entity in which they have an interest, has an interest in the bid awarded or has been employed or retained to solicit or aid in the procuring of the resulting contract, nor will any such person be employed in the performance of such contract.
8. **AWARD.** The contract may be awarded to the lowest responsible and responsive bidder complying with the provisions of the Invitation for Bid. In determining whether a bid is lowest and responsive, and the bidder responsible, the following may be considered by the County: a) Ability to perform the service required within the specified time; b) Reputation, judgment and experience; c) The quality of performance in previous contracts;

- d) Previous compliance with laws, as well as employment practices; e) Financial ability to perform the contract; f) The quality, availability and adaptability of the supplies or the contractual services to the particular use required; g) Ability to provide maintenance and service; h) Whether the bidder is in arrears to the County, in debt on contract, is a defaulter on surety to the County or whether the bidder's taxes or assessments are delinquent; i) The resale value and life cycle costs of the items; j) Such other information as identified in the Purchasing Policy Manual having bearing on the decision to make the award. The County reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest of the County. The County also reserves the right to reject the bid of a bidder who has previously failed to perform properly. The County may award bids by line item, category, or on an all-or-none basis.
9. **MERCHANTABILITY.** There shall be an implied warranty of merchantability and fitness for an intended use. Any bid submittals taking exception to this requirement may, at the County's option, be considered non-responsive.
10. **SAMPLES.** Samples of items, when required, must be furnished free of expense to Placer County and if not destroyed by tests will, upon request, be returned at bidder's expense. Samples of selected items may be retained for comparison.
11. **MANUFACTURER'S NAME AND APPROVED EQUIVALENTS.** Unless otherwise specified, manufacturer's names, trade names, brand names, information and/or catalog numbers listed in a specification are intended only to identify the quality level desired. They are not intended to limit competition. The bidder may offer any equivalent product, which meets or exceeds the specifications. If bids are based on equivalent products, the bids must: 1) Indicate on the bid form the alternate manufacturer's name and catalog number; 2) Include complete descriptive literature and/or specifications; 3) Include proof that the proposed equivalent shall meet the specifications. The County reserves the right to be the sole judge of what is equal and acceptable. If bidder fails to name a substitute, goods identical to the bid standard must be furnished.
12. **INDEMNIFICATION.** Unless indemnification requirements are stated otherwise in this solicitation, said requirements shall be as follows: The Contractor hereby agrees to protect, defend, indemnify, and hold Placer County free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by Placer County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the County) and without limitation by enumeration, all other claims or demands of every character occurring or any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. The Contractor agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Contractor. Contractor also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Contractor or the County or to enlarge in any way the Contractor's liability but is intended solely to provide for indemnification of Placer County from liability for damages or injuries to third persons or property arising from Contractor's performance pursuant to the resulting contract or agreement.
13. **FORCE MAJEURE.** If an emergency or natural disaster causes delay or interferes with the use or delivery of the products/services described in this bid, deliveries may be suspended as long as needed to remove the cause or repair the damage. An emergency or natural disaster includes fire, flood, blizzard, strike, accident, consequences of foreign or domestic war, or any other cause beyond the control of the parties. The County reserves the right to acquire from other sources any products/services during any suspension of delivery.
14. **TAXES.** Placer County is exempt from Federal Excise Tax; an exemption certificate will be furnished upon request. Placer County is not exempt from California State sales/use taxes. All applicable State sales/use taxes will be added to the purchase order.
15. **DELIVERY.** All prices bid must be FOB Destination, unloaded inside and assembled unless otherwise indicated.
16. **FIXED CONTRACT QUANTITIES.** Purchase order(s) for full quantities will be issued to successful bidder(s) after notification of award and receipt of all required documents.
17. **OPEN-END CONTRACT (BLANKET PURCHASE ORDER).** No guarantee is expressed or implied as to the total quantity of commodities/services to be purchased under any open-end contract. Estimated quantities/bid ratio or discounts from manufacturer's list price may be used for bid comparison. The County reserves the right to: issue purchase orders as and when required; or issue a blanket purchase order for individual agencies or multiple County agencies; or any combination of the preceding. No delivery shall be made without a written order by the County, unless otherwise specifically provided for in the contract. If in a subsequent year the vendor offers to

supply his goods and service for the same bid price, or in the event the supplier is willing to negotiate to the satisfaction of Placer County any justifiable price increase prior to the succeeding year's contract renewal and if the service provided by the supplier was to the satisfaction of the County, the County of Placer reserves the right to extend the period of the resulting contract on a year-to-year basis. Alternatively, the bid solicitation may set forth specific renewal terms. Bidder certifies that prices charged to the County for non-listed commodities or no-fixed price items are equal to or less than those charged the bidder's most favored customer for comparable quantities under similar terms and conditions.

18. **NON-APPROPRIATION.** In the event that sufficient funds are not appropriated and budgeted for the payment of goods or services described herein, the agreement shall immediately terminate on the last day of the fiscal period for which appropriations were received or other amounts were available to pay the amounts due under the agreement, without penalty or expense to the County of any kind whatsoever, except that the County will be liable for payment of any unpaid invoices for goods or services which were delivered prior to the end of the last fiscal period for which appropriations were made.

19. **RIGHTS AND REMEDIES OF COUNTY FOR DEFAULT.**

a) Cancellation of the contract shall be governed by Section 21 of Attachment C of this bid document.

b) If any item furnished by the vendor fails to conform to bid specifications, or to the sample submitted by the vendor with his bid, the County may reject it. Upon notice of the County's rejection, the vendor must promptly reclaim and remove such item without expense to the County, and shall immediately replace all such rejected items with others conforming to such specifications or samples. If the vendor fails to do so, the County has the right to purchase in the open market a corresponding quantity of any such items and to deduct from any monies due the vendor the difference between the price named in the contract or purchase order and the actual cost to the County. If the vendor fails to make prompt delivery of any item, the County, after notifying the vendor, has the right to purchase such item in the open market and to deduct from any monies due the vendor the difference between the price named in the contract or purchase order and the actual replacement cost to the County. If the vendor breaches the contract or purchase order, any loss or damage sustained by the County in procuring items which the vendor therein agreed to supply shall be borne and paid for by the vendor. The rights and remedies of the County identified above are in addition to any other rights and remedies provided by law or under the contract. In any legal proceeding brought to enforce the terms of the herein agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs incurred as a result of enforcing the terms of this agreement.

20. **LOCAL VENDOR PREFERENCE.** In accordance with Federal Transit Administration contracting requirements, local vendor preference credit shall not apply to this bid.

21. **INVOICES AND PAYMENT TERMS.** Invoices are to be mailed to the County department specified on the resulting purchase order, blanket purchase order or contract. All invoices must include the purchase order number, blanket purchase order number, or contract number. Failure to comply will result in delayed payments. The County will make payment on a Net 30-day basis unless a cash discount of one-half percent (1/2%) or greater, which amounts to \$2.50 or more, is allowed for payment within not less than twenty (20) days. The payment term shall begin on the date the merchandise is inspected, delivered and accepted by the County, or on the date a correct invoice is received in the office specified in the order, whichever is later. Prompt payment discounts shall be considered earned if payment is postmarked or personally delivered within the prescribed term. For the purposes of this section, the beginning date described above shall be considered day zero for the purposes of counting days in the prescribed term.

22. **LEGAL REQUIREMENTS.** Federal, State, County and local ordinances, rules and regulations, and policies shall govern development, submittal and evaluation of bids and disputes about bids. Lack of knowledge by any bidder about applicable law is not a defense.

23. **ASSIGNMENT.** Any contract awarded shall not be assignable by the vendor without the express written approval of the County, and shall not become an asset in any bankruptcy, receivership or guardianship proceedings.

24. **OTHER AGENCIES.** The successful vendor shall agree to extend Placer County contract prices and terms to other governmental agencies. Any contract resulting from this requirement shall be executed by the successful vendor and the other agency. Placer County will not be a party to "other agency" contracts.

25. **PROTEST AND APPEAL PROCESS.** Any actual or prospective bidder or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Director of Administrative Services in the manner prescribed by Section 10.0 of the Placer County Purchasing Policy. The protest shall be submitted in writing to the Director of Administrative Services within seven (7) calendar days after such aggrieved person or company knows or should have known of the facts giving rise thereto.
26. **RECYCLED PRODUCT PREFERENCE.** A preference of 10% will be given to bids for products meeting the definition of recycled product cited in Public Contract Code Sections 12161 and 12200.
27. **PATENT INFRINGEMENT.** Supplier shall indemnify and hold harmless County, its agents and employees, against and from any and all actions, suits, liabilities, prosecutions, penalties, settlements, losses, damages, costs, charges, attorney's fees, and all other expenses which may arise directly or indirectly from any claim that any of the products supplied by supplier infringes any patent, copyright, trade secret, or other property right.
28. **VENDOR FINANCIAL STABILITY.** If a vendor is currently involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the vendor under federal bankruptcy law or any state insolvency law, the vendor must provide the County with that information as part of its bid/proposal. In accordance with Section 3.12(g) of the Placer County Purchasing Policy Manual and paragraph 8.e. of this document, the County may use information regarding a bidder's financial responsibility when making an award determination.

The County reserves the right to take any action available if it discovers a failure to provide such information to the County, including but not limited to, a determination that the vendor should be declared non-responsive and/or non-responsive, and suspension or debarment of the vendor, in accordance with the processes defined in the Placer County Purchasing Policy Manual.

By submitting a bid/proposal in response to this solicitation, the vendor agrees that if, during the term of any contract it has with the County, it becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the vendor under federal bankruptcy law or any state insolvency law, the vendor will immediately provide the County with a written notice to that effect and that it will provide the County any relevant information requested in order for the County to determine whether the vendor has the financial ability to meet its obligations to the County.

**- - End of General Terms and Conditions - -**

**BID FORM**

(to be completed by bidder)

**1.0 Introduction**

Placer County is soliciting written bids for a contractor to furnish and install one Ingersoll Rand 20H40NG Compressor Pump into an existing Ingersoll Rand Duplex skid mounted CNG compressor package, overhaul two existing 20H40NG Compressor Pumps, and replace one overhauled 20H40NG Compressor Pump into the existing skid mounted CNG compressor package.

**2.0 Background**

Placer County fuels its Auburn-based CNG fleet of buses and light duty vehicles with a 20H40NG Compressor Pump Duplex skid mounted CNG package. This unit was installed at the Auburn Dewitt Center fueling yard in December of 2003. During the 26+ months of operation, the two CNG compressors have been used 6,576 hours and 6,846 hours respectively. The system is operated and maintained by the Placer County Department of Public Works (DPW).

As a first step in expanding the CNG fueling station, DPW needs to extend the life of the existing equipment. DPW has planned to overhaul the existing compressor package. In order to minimize downtime of the system, a new compressor would be installed to replace the first compressor. The first compressor would then be overhauled and reinstalled to replace the second compressor. The second compressor would then be overhauled and stored on DPW's premises for future use.

Following this project, and separately from the services in this bid, the County plans to increase CNG storage on site and upgrade the rapid fill dispenser equipment.

**3.0 Federal Funding**

This procurement may be funded, in part, with Federal Transit Administration (FTA) grant funds. This requires that the bidder complete the certifications included as Attachment C of this bid.

**4.0 Prevailing Wages**

In accordance with California Code of Regulations Section 16001 (b), the Work is subject to the payment of not less than prevailing wages under California Labor Code Section 1720 et seq., OR wage rate(s) specified by the Davis-Bacon Act, whichever is higher. Bidders are hereby notified that the Director of the California Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification or type of worker needed to perform the Work under the contract which will be awarded to the successful bidder. Copies of prevailing wage rates, as issued by the Department of Industrial Relations (D.I.R.), are available for viewing at the Placer County Office of Procurement Services, 2964 Richardson Drive, DeWitt Center, Auburn, CA 95603, or at the D.I.R. home page at [www.dir.ca.gov](http://www.dir.ca.gov). For questions or clarifications of statutes applicable to the payment of prevailing wages, contact the D.I.R. Prevailing Wage Unit by phone (415) 703-4774, or visit the D.I.R. home page.

U.S. Department of Labor wage determinations are available for viewing at <http://www.dol.gov/compliance/laws/comp-dbra.htm>. Read FTA Section 16, “Davis-Bacon and Copeland Anti-Kickback Acts” of Attachment C of this bid document.

## 5.0 **License Requirement**

The successful bidder shall possess and maintain a valid State of California D-40 Service Station Equipment and Maintenance Contractor License or Class A General Engineering Contractor License. The following representations are made under penalty of perjury:

CA State License Number	Classification	Expiration Date
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## 6.0 **Insurance Requirements**

The successful bidder shall furnish evidence of insurance to Placer County Procurement Services demonstrating proof of coverage in the amounts as specified in the Insurance Requirements (Attachment D) within ten (10) calendar days following receipt of a written request from Procurement Services. Failure to comply may result in disqualification of your bid. All costs of complying with the insurance requirements shall be included in your bid pricing.

## 7.0 **Bid Submittals**

Sealed bid responses shall include all of the submittals listed below:

### **Submittal Checklist**

- |    |  |       |
|----|--|-------|
| A. | Signed Bid Face Sheet  | _____ |
| B. | Completed Bid Form (All sections of Attachment A)  | _____ |
| C. | Manufacturer's descriptive literature and specifications sheets for equipment offered  | _____ |
| D. | Warranty terms literature for <b>new</b> equipment including instructions/conditions for requesting warranty repair service        | _____ |
| E. | Warranty terms literature for <b>overhauled</b> equipment including instructions/conditions for requesting warranty repair service | _____ |
| F. | Listing of work to be conducted for overhaul<br>(See Section 2.0 of the Scope of Work)   | _____ |
| G. | Completed Federal Transit Certifications (Attachment C)  | _____ |

**8.0 Pricing**

8.1 Furnish and install one (1) new 20H40NG Compressor Pump

a.	Unit Price	\$_____
b.	7.25% SalesTax	\$_____
c.	Freight – Not to Exceed	\$_____
d.	Labor	\$_____
e.	<b>Subtotal 8.1 (a + b + c + d)</b>	<b>\$_____</b>

8.2 Overhaul two existing 20H40NG Compressor Pumps, replace one overhauled compressor, and place one overhauled compressor into storage on DPW premises.

a.	Parts	\$_____
b.	7.25% Sales Tax	\$_____
c.	Freight – Not to Exceed	\$_____
d.	Labor	\$_____
e.	<b>Subtotal 8.2 (a + b + c + d)</b>	<b>\$_____</b>

**Total Bid Price (8.1e + 8.2e)** \$\_\_\_\_\_**9.0 Invoice/Payment Terms**

Invoice Terms: \_\_\_\_\_ or \_\_\_\_\_% discount if paid within \_\_\_\_\_

days; OR Net payment due within \_\_\_\_\_ days

Refer to Section 21 of the General Terms and Conditions for the County's payment policy.

**10.0 Delivery**

The Contractor shall coordinate delivery, storage and installation of all equipment and parts for the work specified herein. Contractor shall receive delivery of the new pump at the Placer County Garage. Pricing shall be quoted FOB Destination, freight prepaid to the following location:

Placer County Garage  
11448 F Avenue, DeWitt Center  
Auburn, CA 95603

Equipment shall be delivered **within 30 calendar days** after receipt of purchase order.

Indicate the lead time for the equipment offered herein:

\_\_\_\_\_ calendar days after receipt of purchase order  
(bidder to indicate, not to exceed 30 calendar days)



**11.0 Start and Completion of Work**

**11.1 Start of Work**

Contractor shall begin installation and overhaul work within 5 calendar days after the date equipment is received by the Contractor at the Placer County Garage.

**11.2 Completion of Work**

Contractor shall complete all installation, overhaul work, and equipment testing to the satisfaction of the County within 45 calendar days after the start date to be determined in accordance with the above Section 11.1.

## **SCOPE OF WORK**

### **Auburn CNG Station Overhaul**

Location of Work: Placer County CNG Fueling Station, 11448 F Avenue, Dewitt Center, Auburn., CA

#### **1.0 New Installed Equipment**

One (1) 20H40NG Compressor Pump shall be delivered and installed by Contractor into an existing skid mounted Duplex Ingersoll Rand Compressor package at the Placer County Dewitt Center fueling station in Auburn, California. For this work, the Contractor shall:

- Disconnect and remove one of the existing compressor pumps.
- Install the new 20H40NG compressor pump.
- Test new installed equipment for full operation of entire fueling system.

#### **2.0 Overhaul and replacement of Existing Equipment**

Both of the existing 20H40NG compressor pumps shall be overhauled by Contractor. The timing and sequence of the two overhauls shall be mutually determined by Contractor and DPW prior to commencement of work.

##### **2.1 Overhaul**

The purpose of the overhaul is to repair or replace components that have been worn or damaged and restore the compressor pumps to new working condition. The overhaul should extend the life of the compressors to operate another 4000 to 6500 hours with routine maintenance. Bidders shall supply an itemization of work to be conducted to complete a major overhaul of the existing equipment with the bid. Warranty terms for workmanship, parts and major components shall be included.

##### **2.2 Replacement of Second Compressor Pump**

Contractor shall:

- 2.2.1 Disconnect and remove the second existing compressor pump.
- 2.2.2 Install newly overhauled first 20H49NG in place of the second existing compressor pump.
- 2.2.3 Test newly overhauled equipment for operation of the entire fueling system. Return second overhauled compressor pump for storage at the Placer County Garage for future use.

#### **3.0 System Downtime**

System downtime shall be limited to no more than 8 hours at any one time. The system shall be left in working condition during overnight hours to allow for time fill of buses. Any exceptions shall require a written request by the contractor and written approval by Placer County DPW.

## **FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES**

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1.

**FLY AMERICA REQUIREMENTS****49 U.S.C. § 40118  
41 CFR Part 301-10****Fly America Requirements**

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**2. BUY AMERICA REQUIREMENTS****49 U.S.C. 5323(j)  
49 CFR Part 661**

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

**Buy America** - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Certification requirement for procurement of steel, iron, or manufactured products.***Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**3. CHARTER BUS REQUIREMENTS**

**49 U.S.C. 5323(d)**

**49 CFR Part 604**

Charter Bus Requirements do not apply to this procurement.

**3. SCHOOL BUS REQUIREMENTS**

**49 U.S.C. 5323(F)**

**49 CFR Part 605**

School Bus Requirements do not apply to this procurement.

**4. CARGO PREFERENCE REQUIREMENTS**

**46 U.S.C. 1241**

**46 CFR Part 381**

**Cargo Preference - Use of United States-Flag Vessels** - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such

vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## **5. SEISMIC SAFETY REQUIREMENTS**

**42 U.S.C. 7701 et seq. 49**

**CFR Part 41**

Seismic Safety Requirements do not apply to this procurement.

## **6. ENERGY CONSERVATION REQUIREMENTS**

**42 U.S.C. 6321 et seq.**

**49 CFR Part 18**

**Energy Conservation** - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **7. CLEAN WATER REQUIREMENTS**

**33 U.S.C. 1251**

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

### **Clean Water -**

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **8. BUS TESTING**

**49 U.S.C. 5323(c)**

**49 CFR Part 665**

Bus Testing requirements do not apply to this procurement.

**9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS****49 U.S.C. 5323****49 CFR Part 663**

Pre-Award and Post Delivery Audit Requirements do not apply to this procurement.

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**10. LOBBYING****31 U.S.C. 1352****49 CFR Part 19****49 CFR Part 20**

Lobbying requirements do not apply to this procurement.

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**11. ACCESS TO RECORDS AND REPORTS****49 U.S.C. 5325****18 CFR 18.36 (i)****49 CFR 633.17**

**Access to Records** - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the

Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

## **12. FEDERAL CHANGES**

### **49 CFR Part 18**

**Federal Changes** - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## **13. BONDING REQUIREMENTS**

**Bonding Requirements** apply to those construction or facility improvement contracts or subcontracts exceeding \$100,000. FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  - (1) 50% of the contract price if the contract price is not more than \$1 million;
  - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or



(3) \$2.5 million if the contract price is more than \$5 million.

- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

### **Flow Down**

Bonding requirements flow down to the first tier contractors.

### **Model Clauses/Language**

FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

#### **Bid Bond Requirements (Construction)**

##### **(a) Bid Security**

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

##### **(b) Rights Reserved**

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

#### **Performance and Payment Bonding Requirements (Construction)**

The Contractor shall be required to obtain performance and payment bonds as follows:

## (a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

## (b) Payment bonds

1. The penal amount of the payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

**Performance and Payment Bonding Requirements (Non-Construction)**

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

## (a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

## (b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.
- (d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
1. The penal amount of payment bonds shall equal:
    - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
    - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
    - (iii) Two and one half million if the contract price is increased.

### **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

### **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an

amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

**14. CLEAN AIR**  
**42 U.S.C. 7401 et seq**  
**40 CFR 15.61**  
**49 CFR Part 18**

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

**Clean Air -**

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**15. RECYCLED PRODUCTS**  
**42 U.S.C. 6962**  
**40 CFR Part 247**  
**Executive Order 12873**

**Recovered Materials** - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

- (1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof (**In lieu of an attachment, wage determinations are available for viewing at the U.S. Department of Labor website: <http://www.dol.gov/compliance/laws/comp-dbra.htm>**), regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly)

under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly

cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The County of Placer shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing

Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the County of Placer may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**(3) Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the County of Placer for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid



fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## **17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

### **Background and Application**

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any “contract in an amount that is not greater than \$100,000.” 40 USC 3701(b)(3) (A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act’s requirements are satisfied.

### **Clause Language**

#### **Contract Work Hours and Safety Standards**

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** – The County of Placer shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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## **18. [ RESERVED ]**

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## **19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

### **No Obligation by the Federal Government.**

- (1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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## **20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

**31 U.S.C. 3801 et seq.  
49 CFR Part 31 18 U.S.C. 1001  
49 U.S.C. 5307**

### **Program Fraud and False or Fraudulent Statements or Related Acts.**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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**21. TERMINATION**  
**49 U.S.C. Part 18**  
**FTA Circular 4220.1E**

**a. Termination for Convenience (General Provision)** The County of Placer may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to County of Placer to be paid the Contractor. If the Contractor has any property in its possession belonging to the County of Placer, the Contractor will account for the same, and dispose of it in the manner the County of Placer directs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the County of Placer may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the County of Placer that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the County of Placer, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** The County of Placer in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to County of Placer's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from County of Placer setting forth the nature of said breach or default, County of Placer shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude County of Placer from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**d. Waiver of Remedies for any Breach** In the event that County of Placer elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such

waiver by County of Placer shall not limit County of Placer's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**e. Termination for Convenience (Professional or Transit Service Contracts)** The County of Placer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**f. Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the County of Placer may terminate this contract for default. The County of Placer shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

**g. Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the County of Placer may terminate this contract for default. The County of Placer shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the County of Placer, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and County of Placer shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County of Placer.

**h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the County of Placer may terminate this contract for default. The County of Placer shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies the County of Placer in writing of the causes of delay. If in the judgment of the County of Placer, the delay is excusable, the time for completing the work shall be extended. The judgment of the County of Placer shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

**i. Termination for Convenience or Default (Architect and Engineering)** The County of Placer may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The County of Placer shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

**j. Termination for Convenience or Default (Cost-Type Contracts)** The County of Placer may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the County of Placer or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the County of Placer, or property supplied to the Contractor by the County of Placer. If the termination is for default, the County of Placer may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the County of Placer and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the County of Placer, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the County of Placer determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the County of Placer, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

## **22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

### **Background and Applicability**

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

### **Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by County of Placer. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to County of Placer the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The

bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **23. PRIVACY ACT** **5 U.S.C. 552**

**Contracts Involving Federal Privacy Act Requirements** - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### **24. CIVIL RIGHTS REQUIREMENTS** **29 U.S.C. § 623, 42 U.S.C. § 2000** **42 U.S.C. § 6102, 42 U.S.C. § 12112** **42 U.S.C. § 12132, 49 U.S.C. § 5332** **29 CFR Part 1630, 41 CFR Parts 60 et seq.**

**Civil Rights** - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in



the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **25. BREACHES AND DISPUTE RESOLUTION**

### **49 CFR Part 18 FTA Circular 4220.1E**

#### **Flow Down**

The Breaches and Dispute Resolutions requirements flow down to all tiers.

#### **Model Clauses/Language**

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of The Placer County Department of Public Works. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Placer County Department of Public Works shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by County of Placer, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the County of Placer and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the County of Placer is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the County of Placer or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereun

## **26. PATENT AND RIGHTS IN DATA**

**37 CFR Part 401  
49 CFR Parts 18 and 19**

Patent and Rights in Data does not apply to this procurement.

## **27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**

**49 U.S.C. § 5310, § 5311, and § 5333  
29 CFR Part 215**

Transit Employee Protective Agreements do not apply to this procurement.

## **28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

**49 CFR Part 26**

### **Background and Applicability**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

### **Disadvantaged Business Enterprises**

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 10 %. A separate contract goal **has not** been established for this procurement.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County of Placer deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the County of Placer. In addition, **the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.**
- e. The contractor must promptly notify County of Placer whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of County of Placer.

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### **29. [ RESERVED ]**

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### **30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS** **FTA Circular 4220.1E**

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County of Placer requests which would cause County of Placer to be in violation of the FTA terms and conditions.

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**31. DRUG AND ALCOHOL TESTING**  
**49 U.S.C. §5331**  
**49 CFR Parts 653 and 654**

Drug and Alcohol Testing requirements do not apply to this procurement.

## **PLACER COUNTY INSURANCE REQUIREMENTS**

### **1. HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

The CONTRACTOR shall save, keep, hold harmless and indemnify PLACER COUNTY from all damages, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of or in the course of performing work which may be occasioned by any willful or negligent act or omissions of the CONTRACTOR, any of the CONTRACTOR'S employees, or any subcontractors.

The CONTRACTOR shall be responsible for any liability imposed by law and for death, injury, or damage to property of any person including, but not limited to, workmen, subcontractors, and the public, resulting from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance.

If any judgment is rendered against PLACER COUNTY for any injury, death, or damage caused by CONTRACTOR as a result of work performed or completed, pursuant to this agreement, CONTRACTOR shall, at its own expense, satisfy and discharge any judgment.

As used above, the term PLACER COUNTY means PLACER COUNTY, its officers, agents, employees, and volunteers.

### **2. INSURANCE:**

CONTRACTOR shall file with the COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A:VII showing.

### **3. WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:**

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to PROVIDER'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the County of Placer."

CONTRACTOR shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

### **4. GENERAL LIABILITY INSURANCE:**

A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of CONTRACTOR, providing insurance for bodily injury liability

and property damage liability for the limits of liability indicated below and including coverage for:

- (1) Products and completed operations;
- (2) Contractual liability insuring the obligations assumed by CONTRACTOR in this Agreement; and
- (3) Broad form property damage (including completed operations)

Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limits, where applicable, shall apply separately to CONTRACTOR'S work under the Contract.

B. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

C. If CONTRACTOR carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

One million dollars (\$1,000,000) each occurrence  
 One million dollars (\$1,000,000) aggregate

D. If CONTRACTOR carries a Commercial General Liability (Occurrence) policy:

- (1) The limits of liability shall not be less than:
 

One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)  
 One million dollars (\$1,000,000) for Products Completed Operations  
 One million dollars (\$1,000,000) General Aggregate
- (2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

E. Special Claims Made Policy Form Provisions:

CONTRACTOR shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:

- (1) The limits of liability shall not be less than:
 

One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)  
 One million dollars (\$1,000,000) aggregate for Products Completed Operations  
 One million dollars (\$1,000,000) General Aggregate
- (2) The insurance coverage provided by CONTRACTOR shall contain language providing coverage up to six (6) months following the completion of the contract in

order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

**5. ENDORSEMENTS:**

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
- B. "The insurance provided by the Contractor, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
- C. "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the County of Placer."

**6. AUTOMOBILE LIABILITY INSURANCE:**

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles should include owned, nonowned, and hired automobiles/trucks.